

September 29, 1998

## Senate Likely to Pass House-passed Temporary Foreign Worker Bill

To avoid the delay of a conference, the Senate is soon expected to pass by voice vote H.R. 3736, the H1-B bill that is the result of negotiations among House, Senate, and the White House. The House, on September 24, passed H.R. 3736, the Workforce Improvement and Protection Act, by a vote of 288-133.

The Senate passed its original H1-B bill, the American Competitiveness Act (S. 1723) on May 18, 1998, by a vote of 78-20, and the House Judiciary Committee reported its version on July 29, 1998. Both bills raised the current cap for temporary foreign workers (referred to as category H1-B) in response to pressing demands from high-tech employers. However, it was made clear by the Administration that neither the Senate-passed bill nor the House-reported bill would gain the President's signature. The Administration called for greater domestic labor protections. Senator Abraham and Representative Lamar Smith, each chairman of his respective chamber's immigration subcommittee, then met with White House negotiators to achieve the current legislation.

H.R. 3736, in summary, provides the following:

- Raises the current cap for temporary foreign workers (referred to as category H1-B) to 115,000 in fiscal years 1999 through 2000, and a maximum of 107,500 in fiscal year 2001. Thereafter, the maximum H1-B level will revert back to its current 65,000. (The Senate bill would have raised the current cap for foreign workers to 95,000 in fiscal year 1998, a maximum of 105,000 in fiscal year 1999, and 115,000 for fiscal years 2000 through 2002.)
- Improves domestic worker training and education. The bill will provide \$2,500 scholarships for low-income students who desire careers in mathematics, engineering and computer science. It will also provide for a series of demonstration projects to provide technical job training for employed and unemployed workers. These programs are funded by a new \$500 fee paid by employers when filing H1-B-worker petitions. These funds will be distributed as follows:
  - 63 percent for training;
  - 32 percent for scholarships; and
  - the remaining 5 percent for administration and enforcement.

- Increases penalties for violations of the law. The bill increases penalties five-fold for a "willful" violation of the H1-B program to \$5,000 per violation, and doubles to two years the prohibition on any further H1-B employees. If an employer is found to have displaced a U.S. worker 90 days before or after petitioning for a H1-B worker, then penalties may be imposed of not more than \$35,000 per violation with a three-year prohibition on any further H1-B employees.
- Allows the Department of Labor to conduct random investigations for up to five years on employers found to have committed willful failures to meet conditions of the act or willful misrepresentation of material fact in any H1-B application. The Department is also given authority to conduct investigations on H1-B employers when given specific and credible evidence of a violation of the law *and* when personally signed-off by the Secretary of Labor. These provisions will sunset on September 30, 2001.
- Provides "whistle blower" protection for temporary alien workers. Informants, including H1-B alien-workers, who provide Department of Labor investigators with evidence of suspected violations, are provided with confidential "whistle blower" protection. The bill also directs the Secretary of Labor and the Attorney General to create a process protecting an already present H1-B alien worker whose employer, due to past violations, was prohibited from employing any H1-B workers. The H1-B worker would be allowed to remain in the country and seek employment elsewhere.
- Prohibits employers from charging H1-B alien workers a penalty for quitting work prior to the date agreed to by the sponsoring employer. If an employer is found to have committed such an act, the employer will be fined \$1,000, and ordered to return the sums taken from or withheld from the H1-B employee.

---

Staff Contact: Kenneth Foss, 224-2946